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No. 96-

In the Supreme Court of the United States

OCTOBER TERM, 1996

GEORGE L. MOTHERSHED,
PETITIONER,

v.

GERALD E. DURBIN, II;
HELEN J. CRAWFORD;
LUTHER B. EUBANKS;
DURBIN, LARIMORE & BIALICK,
a professional corporation;
MARK E. BIALICK;
ELIZABETH J. NEVITT;
GARY L. BROOKS; and
CARROLL E. GREGG,
RESPONDENTS.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether, ordinarily a party becomes subject to personal jurisdiction of a United States District Court either by filing a complaint or being served with process.

Whether federal courts exercise of sovereign power of personal jurisdiction is limited by a party's individual liberty due process right of a convenient forum location and/or transfer of an action.

Whether an invalid order attempting to transfer venue to another forum is not validated through waiver when a party timely protects the right to litigate an action in a forum through timely and sufficient objections to the invalid transfer.

Whether due process requires a district court's finding of minimal standards to decide whether the transfer is necessary.

Whether procedural due process right of personal liberty requires a transferor court to weigh the inconvenience of all the parties.

Whether *Mathews v. Eldridge* requires a district court to consider a transfer of venue and jurisdiction to another court to weigh the parties' procedural due process factors to support such a transfer.

Whether due process requires the transferor court state the factual basis of the evidence and the legal reasons for a valid transfer of personal jurisdiction and venue to another forum.

Whether a moving party's 28 U.S.C. § 1404(a) transfer motion is to be decided and granted by the transferor court using the standard as stated in its legislative history requiring a determination that the transfer to the transferee forum "is necessary for the conve

QUESTIONS PRESENTED

nience of the parties and witnesses, and further, that it is in the interest of justice to do so."

Whether the plaintiff's choice of forum is a factor to be weighed by a district court in 28 U.S.C. § 1404(a) transfer proceeding that proposed the transfer to the transferee forum "is necessary for the convenience of the parties and witnesses, and further, that it is in the interest of justice to do so."

Whether a moving party's 28 U.S.C. § 1404(a) transfer motion has the burden of proof to establish factors evidencing to a district court that the transfer to the transferee forum "is necessary for the convenience of the parties and witnesses, and further, that it is in the interest of justice to do so."

Whether a moving party seeking the grant of a 28 U.S.C. § 1404(a) transfer must establish evidence of a clear or strong case for the transfer, including the moving party must establish by a preponderance of the evidence that the trial will be significantly more conveniently proceed for the parties, witnesses and the ends of justice will be better served by a transfer to another forum.

Whether the documentary evidence required by Federal Rules of Civil Procedure, Rule 43(e) to be produced in support of the 28 U.S.C. § 1404(a) transfer motion by the moving party presenting affidavits, depositions, stipulations and other documents that the district court can only consider those facts that are undisputed or are otherwise evidentiary matters of record.

Whether the affidavits admitted into evidence in a 28 U.S.C. § 1404(a) transfer motion may be conclusionary, broad and general or vague.

QUESTIONS PRESENTED

Whether the movant in a 28 U.S.C. § 1404(a) transfer motion must state all relevant and necessary facts, such as specific grounds showing hardship in the transferor forum and necessity for the transfer to another forum of the parties or of the prospective witnesses.

Whether *Van Dusen v. Barrack*, 376 U.S. 612, 84 S.Ct. 805, 11 Ed.2d 552 (1964) is germane case authority to support a 28 U.S.C. §1404(a) transfer of a civil 28 U.S.C. § 1331, federal action, i.e. a RICO claim.

Whether an "interest of justice" factor without evidence in the record may serve as the basis of a district court's grant of a defendant's 28 U.S.C. § 1404(a) transfer motion.

Whether the district court may *sua sponte* take Federal Rules of Evidence, Rule 201(c) judicial notice finding a sole "interest of justice" factor as the evidentiary grounds for the grant of a 28 U.S.C. § 1404(a) transfer motion.

Whether the transferor forum is the appropriate forum to challenge the validity of a 28 U.S.C. § 1404(a) transfer order through appropriate post order motions and proceedings.

Whether a district court may summarily deny a party's requested mandatory Federal Rules of Evidence, Rule 201(e) evidentiary hearing.

Whether a denial of a party's requested mandatory Federal Rules of Evidence, Rule 201(e) evidentiary hearing is an appealable order pursuant to 28 U.S.C. § 1291.

QUESTIONS PRESENTED

Whether a denial of a party's sua sponte motion summarily ordering a party's Federal Rules of Civil Procedure, 59(a) motion for a new trial stricken from the record an appealable order pursuant to 28 U.S.C. § 1291.

Whether a motion to transfer is subject to the collateral order doctrine and reviewable at the appellate level of a transferor district court's denial of other final appealable motions or proceedings attacking the validity of a grant of 28 U.S.C. § 1404(a) transfer order.

Whether existing judicial precedents effectively preclude judicial reconsideration by a transferor court of its invalid 28 U.S.C. § 1404(a) transfer order.

Whether transferee courts acquire personal jurisdiction over parties only if an action is validly transferred.

Whether an adjudicatory system lacking a minimal level of accuracy in its 28 U.S.C. § 1404(a) transfer decisions is a wholesale abandonment of the procedures in striving to achieve accurate results for parties, but also is a denial of the parties' Due Process.

LIST OF PARTIES

The parties to the proceedings below were Petitioner, George L. Mothershed, and Respondents Gerald E. Durbin, II; Helen J. Crawford; Luther B. Eubanks; DURBIN, LARIMORE & BIALICK, a professional corporation; Mark E. Bialick; Elizabeth J. Nevitt; Gary L. Brooks; and Carroll E. Gregg.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner George L. Mothershed prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Ninth Circuit. The orders that review is sought from this Court are as follows: one is undated and the other order was entered in the within proceeding on October 30, 1996.

ORDERS BELOW

The order of the United States Court of Appeals for the Ninth Circuit that gives rise to this petition is unreported. An undated order issued by the United States Court of Appeals for the Ninth Circuit is reprinted in the Petitioner's Appendix hereto as App. 1a.[1] A second order dated October 30, 1996, is reprinted in the Appendix hereto referred to as App. filed herewith 2a. An Order Striking Plaintiff's Rule 59 Motion issued by the United States District Court for the Central District of California (District Court), filed February 12, 1996, is reprinted in Petitioner's Appendix hereto as App. 4a-5a. An Order Denying Plaintiff's Request for Hearing issued by the District Court dated January 26, 1996, is reprinted in Petitioner's Appendix hereto as App. 5a. And a third order of the District Court, Order Transferring Action, dated February 28, 1995, is reprinted in Petitioner's Appendix hereto as App. 8a-9a. None of the foregoing orders are reported. The Order

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[1] Only after his persistent requests to the Ninth Circuit, including a letter of request to the office of the Chief Judge of the Circuit did the Petitioner first receive copy of this order on November 8, 1996. As set forth in the Petitioner's Appendix at page 1a, the telephone facsimile copy of the Order he received is neither internally dated nor "filed" stamped.

Denying Plaintiff's Request for Hearing (App. 6a) and Order Striking Plaintiff's Rule 59 Motion (App. 5a-6a), respectively are Orders of the District Court and are Final Appealable Orders.

JURISDICTION

Invoking federal jurisdiction Petitioner, brought a civil Racketeering Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 (RICO) action against Respondents in the United Stated District Court for the Central District of California. (District Court) on July 28, 1994. Serving Complaint and Summons upon Respondents, nationwide personal jurisdiction and venue is conferred upon the District Court through 18 U.S.C. § 1965(a).

Upon motion of Respondents the District Court entered a Order Transferring Action (App. 8a-9a) on February 28, 1995. On July 7, 1995, the District Court entered an Order Striking Motion by Plaintiff to Vacate (App. 7a). The District Court entered an Order Denying Request by Plaintiff for Hearing on January 26, 1996 (App. 6a). On February 12, 1996, the District Court entered an Order Striking Plaintiff's Rule 59 Motion (App. 4a-5a).

On the Ninth Circuit entered an Order sua sponte dismissing this appeal for lack of jurisdiction.(App. 1). However, a copy of this Order was received only after numerous requests by Petitioner on November 8, 1996. On October 30, 1996, the Ninth Circuit denied Petitioner's motion to reinstate appeal. (App. 2a). The jurisdiction of this Court to review the Order of the Ninth Circuit is invoked pursuant to 28 U.S.C. § 1254(1).

The statutory basis for claiming federal jurisdiction of the United States Court of Appeals in the Ninth Circuit for the

district court order appealed thereto is a final or otherwise appealable order is: 28 U.S.C. § 1291, and the statutory basis for the jurisdiction of the Ninth Circuit is 28 U.S.C. §§ 41; 84.

STATEMENT OF THE CASE

A. Trial Court Proceedings. George L. Mothershed, Petitioner, brought a civil Racketeering Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 (RICO) action in the United Stated District Court for the Central District of California. (District Court). All parties are served and properly before the District Court. The District Court has personal jurisdiction over all parties.

The defendants (Respondents herein) on August 28, 1994, filed a joint consolidated motion and memorandum. An issue raised in the defendants' motion and memorandum was a request to dismiss the federal RICO action for want of jurisdiction or to transfer pursuant to 28 U.S.C. § 1404(a). Five of the eight defendants attached virtually identically worded affidavits to their Memorandum (DOC. 4, p. 38-43)[2]. None of the form affidavits evidence any necessity to support a valid transfer of this action, pursuant to 28 U.S.C. § 1404(a). Also, included in the defendants' joint consolidated motion and memorandum were also orders, motions, briefs and papers from terminated proceedings in other courts. None of these documents evidence the necessity of a transfer.

To lawfully deter any cure or waive the order's defects in the attempted transfer of venue and jurisdiction 28 U.S.C. § 1404(a) order, Mr. Mothershed has always zealously interposed

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[2] "DOC." refers to a District Court pleading, motion or other instrument and is refered to by its Dockett Number.

numerous timely, abundant and sufficient objections to block the transfer of personal jurisdiction and venue. In addition to the filed timely objections in the District Court, and in the transferee court Mr. Mothershed filed three petitions for mandamus in the Ninth Circuit and one appeal.

Without considering the merits of the parties' motions, petitions or other papers, the District Court ordered the clerk of that court as follows: "The document(s) are not to be filed, but instead rejected and returned to counsel."(App. 17a-30a; DOC. 25, 29, 30, 31, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 53, 55, 56, 57). Through his conduct, Mr. Mothershed has neither consented, acquiesced, waived, nor has he been estopped by any custom or usage to have otherwise conceded to the validity of the grant of the District Court's transfer of personal jurisdiction and venue to any other forum. Petitioner's objections to the invalid transfer of personal jurisdiction and venue have not been found to be insufficient or untimely. Also, the opposing parties have never asserted the Petitioner's objections were untimely. Further the opposing parties have not previously averred Petitioner's has acquiesced, waived or otherwise been estopped from objecting to the invalid transfer order. (see District Court Docket Sheet, App. 17a-30a).

The District Court did not conduct an evidentiary hearing to receive other evidence for the required weighing the necessity of the transfer based upon "convenience of the parties and witnesses in the interest of justice." In spite of the record's failure to contain material relevant evidence, on February 28, 1995, the District Court entered a void Order (App. 8a, DOC. 26 p.2, l.10-13). The District Court through a *sua sponte* fact finding stated." . . the history of litigation between the parties strongly suggests that the interests of justice would best be served by transferring this action to the Western District of Oklahoma. . .".

The office of the clerk of the District Court transmitted the

original case files to the office of the clerk of transferee district court. Yet, jurisdiction and venue of the action remains constructively filed in the District Court.

The record lacks sufficient evidence to prove any factual basis to establish any 28 U.S.C. § 1404(a) necessity for the Order Transferring Action (App. 8a, DOC. 26). The District Court took Fed.R.Evid. 201(c) judicial notice of the "history of litigation between the parties" to serve as the evidentiary basis for the 28 U.S.C. § 1404(a) transfer order.

On January 25, 1996, was filed in the trial court Petitioner's Request for Hearing Notice of Taking of Judicial Notice, Notice of Hearing for Judgment by Default and for Writ of Ne Exeat on grounds the trial court had taken Federal Rules of Evidence (Fed.R.Evid.), Rule 201(c) judicial notice in its Order Transferring Action. Fed.R.Evid. 201(e) requires a district court to conduct an evidentiary hearing upon such a request. The District Court entered a sua sponte Order Denying Request By Plaintiff for Hearing. Mothershed v. Durbin, et al., (Cent.D.Calif., January 26, 1995, CV-94-05082-RMT(Bx) [unreported]) (App. 6a). Thereafter, on February 5, 1996, Petitioner filed a Motion for Rule 59 New Trial. The District Court, also, entered a sua sponte Order Striking Plaintiff's Rule 59 Motion. Mothershed v. Durbin, et al., (Cent.D.Calif., February 8, 1995, CV-94-05082-RMT(Bx) [unreported]) (App. 4a-5a).

B. Appellate Court Proceedings. Under authority of Federal Rules of Appellant Procedure (F.R.A.P.), 4(a) on February 12, 1996, Petitioner filed a notice of appeal in the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) and was assigned case No. 96-55324. Simultaneously, Petitioner filed a

Petition for Writ of Mandamus in the Ninth Circuit. Petitioner had twice previously sought the Ninth Circuit to review the District Court's orders through petition for writ of mandamus. Upon each occasion his petition was denied. The Ninth Circuit denied petitioner's Petition for Writ of Mandamus, refusing to assume jurisdiction. (Mothershed v. United States District Court for the Central District of California, March 28, 1996, No. 96-70131 [unreported]).

Petitioner in appealed case No. 96-33324 attempted to file an Opening Brief, when he received from the Office of the Clerk of Ninth Circuit "Receipt of a Deficient Brief of Appellant on June 3, 1996" letter. (App. 10a-11a). Without having received an actual copy of the order terminating action Petitioner filed a Motion and Memorandum to Reinstate Appeal on June 11, 1996. The Ninth Circuit, contrary to Petitioner's appeal as a matter of right entered a summary sua sponte order dismisses the appeal for lack of jurisdiction. (No "FILED" stamp or internally dated, No. 96-55324 [unreported]) (App. 1a). An original "FILED" stamp dated copy of said Order has not been received by Petitioner from the Ninth Circuit. Petitioner, after being told by a Ninth Circuit deputy clerk of court of existance of said order terminating action in Ninth Circuit case no. 96-55324, made many requests from the office of the Clerk of Court of the Ninth Circuit, including a written request to the Office of the Chief Judge of the Circuit. On October 23, 1996, the same appeals panel entered a second order in the Petitioner's mandamus proceeding again denying mandamus relief. (App. 3a). (Mothershed v. United States District Court for the Central District of California, October 23, 1996, 96-70131 [unreported]).(App. 2a). On October 30, 1996, the panel denied Petitioner's motion to reinstate appeal. Mothershed v. Durbin, et al., (No. 96-55324 [unreported]) (App. 2a).

REASONS FOR ALLOWANCE OF WRIT

Pursuant to Rules of the Supreme Court of the United States, Rule 10(a), Petitioner respectfully requests this Court exercise its discretion and issue a writ of mandamus for the compelling reasons as follows:

1. The United States Court of Appeal for the Ninth Circuit has departed from the accepted and usual course of judicial proceedings. The departure from the accepted and usual course of proceedings is the Ninth Circuit denied Petitioner a 28 U.S.C. § 1291 direct appeal as a matter of right. Further, the Ninth Circuit applying immaterial and irreverent case law sua sponte summarily denied appellate jurisdiction. Mothershed v. Durbin, et al., (No "FILED" stamp or other date, 96-55324 [unreported]) (App. 1a). The Ninth Circuit erroneously ordered Petitioner's appeal be dismissed for want of jurisdiction. Jurisdiction was erroneously denied because the district court's Order Striking Plaintiff's Rule 59 Motion (citing *Chacon v. Babcock*, 640 F.2d 221 (9th Cir. 1981), was found to be a non-appealable FED.R.CIV.P. 56 partial summary judgment. The Ninth Circuit's order denying a FED.R.CIV.P. 59(a) motion for a new trial under 28 U.S.C. § 1291 is in conflict with the relevant rule of law of this Court because an order striking a FED.R.CIV.P. 59(a) motion for a new trial is an appealable order. *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980)(*per curiam*). The substance of the prior orders including a grant of a 28 U.S.C. § 1404(a) transfer order which remains significant at the end of the proceeding is reviewed along with the final appealable order. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981). Therefore the District Court's Order Striking Plaintiff's Rule 59 Motion and Order

Transferring Action are properly reviewable by the Ninth Circuit.

2. The United States Court of Appeal for the Ninth Circuit has failed to decide an important question of federal law because there exist no established standards for circuit or district courts to follow for the grant or denial of a party's 28 U.S.C. § 1404(a) transfer of venue motion. Lacking established standards there exists conflict among the circuits and district courts. The simple and straight forward statute 28 U.S.C. § 1404(a) with a simple and straight forward legislative history[3] has generated a perplexing amount of litigation.[4] The sheer number of cases demonstrate that transfer motions are not an unimportant procedural anachronism. Presently federal district courts virtually have no standards[5] with

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[3] "[28 U.S.C. § 1404] Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. An example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 314 U.S. 44, 62 S.Ct. 6, 86 L.Ed. 28, which was prosecuted under the federal Employer's [sic] Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for the convenience of the parties and witnesses, and further, that it is in the interest of justice to do so." H. R. Rep. No. 308, 80th Cong., 1st Sess. A 132 (1947); H. R. Rep. No. 2646, 79th Congress., 2nd Sess. A 127 (1946). Set out in *Ex parte Collett*, 337 U.S. 55, 58, 69 S.Ct. 944, 93 L.Ed. 1207 (1949)

[4] Charles A. Wright, Law of Federal Courts, (2nd.ed. 1970) § 44, at 165 (stating that no "issue of civil procedure gives rise to so many reported decisions, year after, as does this seemly simple statute."

[5] *Norwood v. Kirkpatrick*, 349 U.S. 29, 34, 75 S.Ct. 544, 99 L.Ed. 789 (Clark, J. dissenting) (1955) (Justice Clark predicted this outcome when he stated the district courts are "set adrift on an uncharted sea, to order transfers

(continued...)

which to weigh and apply in considering the appropriateness of a 28 U.S.C. § 1404(a) transfer venue motion.[6] The conflicting decisions reached by different courts on the transfer of a single case illustrate the extent of disagreement of current section 1404(a)

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[5](...continued)
according the personal notions of justice"). *Kasey v. Molybdenum Corp.*, 408 F.2d 16, 20 (9th Cir. 1969) ("'At best, the [district] judge must guess [in a 1404(a) transfer decision], and we should accept this guess unless it is too wild.'") (citing *Ford Motor Co. v. Ryan*, 182 F.2d 329, 331-32 (2nd Cir.), cert. denied, 340 U.S. 851 (1950).

[6] *Stewart Organization v. Ricoh Corp.*, 481 U.S., 22, 29, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988) (Noting that "noting that [28 U.S.C.] section 1404(a) intended to place discretion in the district court). See also 1A Pt. 2 James W. More et al., Moore's Federal Practice, (2nd ed 1996-1997), ¶ 0.345[5] at 4362-63 ("the combination and weight of factors . . . cannot be catalogued); David E. Steinberg, The Motion to Transfer and the Interest of Justice, (1990) 66 Notre Dame L.R. 443, 446-447 ("This article reviews the law governing section 1404 motions and concludes that this body of law is in chaos. The ad hoc balancing by the district courts precludes any prediction on whether a particular motion will succeed. This lack of standards invites a defendant to seek a transfer even when the plaintiff has chosen a reasonable forum. Today, the motion to transfer often has little relationship to the 'interest of justice.' Instead, such motions have become a vehicle for defendants to delay and an increasing burden on the already backlogged federal courts. [footnote omitted]"). Edmond W. Kitch, Section 1404(a) of the Judicial Code: In the Interest of Justice or Injustice? (1965) 40 Ind. L.J. 99, 141 ("Section 1404(a) suffers from irremedial defect . . . [M]ost transfers serve no significant purpose and the courts become burdened with considerations of § 1404(a) motions."); Stowell R.R. Kelner, "Adrift on an Uncharted Sea": A Survey of Section 1404(a) Transfer in the Federal System, (1992) 67 New York. U. L. R. 612-646 (see text accompanying notes 31-112 [discussing the massive number of judicially improvised factors to be considered by a district court in a 28 U.S.C. § 1404(a) transfer motion decision]).

analysis.[7] Furthermore, because appellate review of a transfer order is deferred until final judgment[8] and because even then transfer orders remain effectively non-reviewable,[9] appellate courts have virtually no opportunity to provide guidance to district courts as which factors are most appropriate and pertinent to the consideration of a transfer motion. Different circuit transferee appellate and district courts lack authority to review the transfer decision of

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[7] On uncontrolled district court discretion, see generally Frendly, Indiscretion about Discretion, 31 Emory L. J. 748, 756-58 (1982).

8 28 U.S.C. § 1291 allows appeals only upon final judgment. *U.S. Fire Ins. Co. v. American Family Life Assurance Co. of Columbus, Ga.*, 787 F.2d 438, 439 (8th Cir. 1986) (considering § 1404(a) transfer orders as interlocutory and non-appealable for review by the transferor circuit). "Interlocutory appeal is generally unavailable to review a section 1404(a) transfer order because seldom, if ever, is a controlling question presented." Masington, Venue in the Federal Courts-The Problem of the Inconvenient Forum, (1961) 15 U. Miami L.R. 237, 298. Circuit Courts are in conflict on the appropriate standards for mandamus review of a district court order. *Hustler Magazine v. United States District Court*, 790 F.2d 69, 70 (10th Cir. 1986); *Kasey v. Molybdenum Corp.*, 408 F.2d 16, 18 (9th Cir. 1969) ("the circuits are drastically divided on this question"); 15 Wright Miller, & Cooper, Federal Practice and Procedure: Jurisdiction, (1986) § 3855, at 481. ("Indeed, the variations among the circuits, and the changes of view within a particular circuit, are so great that the law on this point must be examined on a circuit-by-circuit basis.") Kitch, Section 1404(a) of the Judicial Code: In the Interest of Justice or Injustice?, (1965) 40 Ind.L.J. 99, 110.

9 15 Wright & Miller, Federal Practice and Procedure: Jurisdiction, 2nd, § 3855, at 472-94.

the transferor district court.[10] Because of theses intrinsic procedural limitations appeals after appealable orders or judgments challenging the validity of a transfer order are not likely to succeed[11].

***Van Dusen v. Barrack*, IS NOT GERMANE CASE AUTHORITY TO SUPPORT A VALID 28 U.S.C. §1404(a) TRANSFER OF A CIVIL 28 U.S.C. § 1331, FEDERAL ACTION, i.e., A RICO CLAIM**

The District Court's 28 U.S.C. § 1404(a) order (App. 8a; DOC.26, p.2, l.1-2) also incorrect cited *Van Dusen v. Barrack*, 376 U.S. 621, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964) as controlling case authority for the transfer of a federal RICO action, a 28 U.S.C. § 1331 federal action. The Order erroneously attempted to transfer specifically conferred RICO nationwide jurisdiction and venue 18 U.S.C. § 1965(a) following case authority that only applies to the granting of a transfer of a diversity of citizenship action, pursuant to 28 U.S.C. § 1332.

For this additional reason, the Order Transferring Action is invalid because the principles of *Van Dusen* are not germane case authority for a transfer of a federal claim. *In re Korean Air*

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[10] *Linell v. Sloan*, 636 F.2d 65, 67 (4th Cir. 1980); *Starnes v. McGuire*, 512 F.2d 918, 924 (D.C. Cir. 1974)(en banc); *Illinois Tool Works, Inc., Sweetheart Plastics, Inc.*, 436 F.2d 1180, 1187-88 (7th Cir.), *cert. denied*, 403 U.S. 942 (1972). See also 15 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction, 2d, (1986) § 3855, at 473-74 note 43.

[11] *Filmline Prod., Inc. v. United Artists Corp.*, 865 F.2d 513, 520 (2nd Cir. 1989); *Kasey v. Molybdenum Corp of America*, 408 F.2d at 20; See also Kitch, supra note 8 at page 113.

Disaster, 829 F.2d 1171, 1175 (Fed. Cir. 1987)(*per Ginsberg, J.*), *affirmed on other grounds sub nom*, 490 U.S. 122, 109 S.Ct. 1096, 104 L.Ed.2d 113 (1989); Marcus, Conflicts Among the Circuits and Transfers Within the Federal System, 93 Yale L.J. 677 (1984). The district court's citation of *Van Dusen* is not case law germane for the valid transfer of a 28 U.S.C. § 1331 federal action.

Lacking established standards for the grant of a valid 28 U.S.C. § 1404(a) motions, a district court, as in the instant case, may grant an invalid unreviewable transfer to another district court. The record does not evidence the " . . . that the transfer is necessary for the convenience of the parties and witnesses, and further, that it is in the interest of justice to do so." The transfer order is not based upon germane case law. Lacking germane evidence and case law, the transfer order is invalid. Essentially, appellate courts have no opportunity to review invalid transfer orders. Also, the invalid transfer order denies Petitioner personal liberty constitutional due process. Without having established constitutional or statutory standards for a valid 28 U.S.C. § 1404(a) transfer Petitioner is denied Fifth Amendment Due Process because there is a wholesale abandonment of procedures that are necessary to achieve accurate results.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the writ should be granted.

Respectfully submitted,

George L. Mothershed, *Petitioner*
8445 North 83rd Avenue, Peoria, Arizona 8535-8038
Telephone (602) 878-5290

No. 96-

In the Supreme Court of the United States

OCTOBER TERM, 1996

GEORGE L. MOTHERSHED,
PETITIONER,

v.

GERALD E. DURBIN, II;
HELEN J. CRAWFORD;
LUTHER B. EUBANKS;
DURBIN, LARIMORE & BIALICK,
a professional corporation;
MARK E. BIALICK;
ELIZABETH J. NEVITT;
GARY L. BROOKS; and
CARROLL E. GREGG,
RESPONDENTS.

PETITIONER'S APPENDIX
To Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

GEORGE L. MOTHERSHED
Petitioner
8445 North 83rd Avenue
Peoria, Arizona 85345
Telephone (602) 878-5290

"SENT BY: US COURT OF APPEALS: 11-8-96:
OFC OF STAFF ATTYS-6025612770: 1/1"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE L. MOTHERSHED, *Plaintiff-Appellant,* vs. GERALD E. DURBIN, II, et al., *Defendant-Appellees,*	No. 96-55324 DC# CV-94-5082-RMT Central California ORDER

Before: GOODWIN, WIGGINS, and O'SCANNLAIN, Circuit Judges

This court sua sponte dismisses this appeal for the lack of jurisdiction. *See Chacon* v. *Babcock,* 640, F.2d 221 (9th Cir. 1981).

All pending motions are denied as moot.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE L. MOTHERSHED,
Plaintiff-Appellant,

vs.

GERALD E. DURBIN, II, et al.,
Defendant-Appellees,

No. 96-55324

DC# CV-94-5082-RMT
Central California

ORDER

[FILED OCT. 30, 1996]

Before: GOODWIN, WIGGINS, and O'SCANNLAIN, Circuit Judges

The motion to reinstate this appeal is denied. To the extent that appellant seeks mandamus relief, that request is denied. No further submissions will be filed or entertained in this closed docket.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE L. MOTHERSHED, *Plaintiff-Appellant,*	No. 96-70131
vs.	
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, *Respondent,*	DC# CV-94-5082-RMT Central California
	ORDER
GERALD E. DURBIN, II, et al., *Real Party in Interest.*	[FILED: OCT. 23, 1996]

Before: GOODWIN, WIGGINS, and O'SCANNLAIN, Circuit Judges

The motion to reinstate this appeal is denied. To the extent that appellant seeks mandamus relief, that request is denied. No further submissions will be filed or entertained in this closed docket.

[FILED FEB. 12, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE L. MOTHERSHED,
Plaintiff-Appellant,

vs.

GERALD E. DURBIN, II, et al.,
Defendant-Appellees,

No. CV-94-5082-RMT(Bx)

ORDER STRIKING PLAINTIFF'S RULE 59 MOTION

[THIS CONSTITUTES NOTICE OF ENTRY REQUIRED BY FRCP, RULE 77(d).]

On February 5, 1996, plaintiff filed a motion for a Rule 59 New Trial and Notice of a Hearing for Plaintiff' Motion for Rule 59 New Trial. However, almost a year ago, this court transferred this action to the United States District Court for the Western District Court of Oklahoma, resulting in this court no longer having jurisdiction to entertain this motion.

The court also notes that sence the transfer of this action to the Western District of Oklahoma, although the plaintiff was advised that the court no longer having jurisdiction to entertain further motions herein, plaintiff has attempted to file several motions, some on mutiple occassions, for the court's consideration.

Accordingly,

IT IS ORDERED that the Motion for Rule 59 New Trial and Notice of Hearing for Plaintiff's Motion for Rule 59 New Trial are hereby striken from this record.

IT IS FURTHER ORDERED that the Clerk's Office is hereby directed not to accept any documents for filing from

plaintiff hereafter and to, instead, to lodge any documents submitted by plaintiff and deliver them to this court's chambers for the court's determination of whether the documents should be accepted for filing or rejected and returned to plaintiff.

Dated: 2/8/96

/s/ Robert M. Takasugi
ROBERT M. TAKASUGI
United States District Judge

[FILED JAN. 26, 1996]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE L. MOTHERSHED, *Plaintiff-Appellant,* vs. GERALD E. DURBIN, II, et al., *Defendant-Appellees,*	No. CV-94-5082-RMT(Bx) ORDER DENYING REQUEST BY PLAINTIF FOR HEARING

This matter having come before the court on the Plaintiff's Request for Hearing Notice of Taking of Judicial Notice, Notice of Hearing for Judgment by Default, and for Writ of Ne Exeat, whereby plaintiff seeks the setting of a hearing to challenge this court's order transferring action to the United States District Court for the Western District of Oklahoma, filed February 24, 1995, and entered February 28, 1995, and the court having considered the record herein and determined that this court does not have jurisdiction to consider plaintiff's challenge and the plaintiff's recourse lies in the Ninth Circuit Court of Appeals or the Western District of Oklahoma,

IT IS ORDERED that plaintiff's request for a hearing is denied.

Dated: Jan. 25, 1996

/s/ Robert M. Takasugi
ROBERT M. TAKASUGI
United States District Judge

[FILED JUL. 7, 1995]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE L. MOTHERSHED, *Plaintiff,* vs. GERALD E. DURBIN, II, et al., *Defendants.*	No. CV-94-5082-RMT(Bx) ORDER STRIKING MOTION BY PLAINTIFF TO VACATE [THIS CONSTITUTES NOTICE OF ENTRY REQUIRED BY FRCP, RULE 77(d).]

This matter having come before the court on the motion by plaintiff to vacate an order of this court dated February 28, 1995, and the court having considered the pleadings and other documents filed herein and determine the following:

1. By order filed February 28, 1995, and entered February 28, 1995, this action was transferred to the United States District Court for the Western District of Oklahoma;

2. On March 13, 1995, the file herein was transmitted to the United States District Court for the Western District of Oklahoma; and

3. Due to the transfer of this action to the United States District Court for the Western District of Oklahoma, this Court does not have jurisdiction to entertain the motion, this court does not have jurisdiction to entertain the motion by plaintiff,

IT IS ORDERED that the motion by plaintiff to vacate is stricken.

Dated: 7/6/95

/s/ Robert M. Takasugi
ROBERT M. TAKASUGI
United States District Judge

[FILED FEB. 28, 1995]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE L. MOTHERSHED,
Plaintiff-Appellant,

vs.

GERALD E. DURBIN, II, et al.,
Defendant-Appellees,

No. CV-94-5082-RMT(Bx)

ORDER TRANSFERRING ACTION

[THIS CONSTITUTES NOTICE OF ENTRY REQUIRED BY FRCP, RULE 77(d).]

This matter having come before the court on the motion of the defendants GERALD E. DURBIN, II; HELEN J. CRAWFORD (AKA HELEN J. ZAJIC); LUTHER B. EUBANKS; DURBIN, LARIMORE & BIALICK, A Professional Corporation; MARK E. BIALICK; ELIZABETH J. NEVITT; GARY L. BROOKS; AND CARROLL E. GREGG, to dismiss, or in the alternative, transfer to the United States District Court for the Western District of Oklahoma, and the court having considered the pleadings and other documents filed herein and determined the following:

1. "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. 1404(a); *See also. Van Dusen* v. *Barrack,* 376 U.S. 612 (1964) (The purpose of Section 1404 is to prevent the waste of time and money; and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.);

2. Only one defendant and possibly one witness is located in the Central District of California. The plaintiff is located in the State of Arizona and all remaining defendants are located in the Western District of Oklahoma; and

3. This court chooses not to rule on defendants' motion to dismiss because of the history of litigation between the parties strongly suggests that the interest of justice would be best served by transferring this action to the Western District of Oklahoma where the court is familiar with the numerous prior suits that have been filed, the evidence related thereto, and the results thereof,

IT IS ORDERED that this action be transferred to the United States District Court for the Western District of Oklahoma.

Dated: 2/24/94

/s/ Robert M. Takasugi

Robert M. Takasugi
United States District Judge

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
121 Spear Street, P.O. Box 193939
San Francisco, CA 94139-3939

June 3, 1996

George L. Mothershed
6901 West Tonto Drive
Glendale, AZ 85308

Office of the Clerk
By: Reinaldo Guzman, Deputy Clerk
Receipt of Deficient Brief of Appellant's on June 03, 1996.

U.S. Court of Appeals Docket No. 96-55324
Short Title: Mothershed v. Durbin

The referenced brief cannot be filed for the following reason(s):

This appeal is closed since March 28, 1996. To reopen this appeal you shall file a motion for reinstatement of the appeal. The following action has been taken with respect to the brief received by this office:

[ ] The deficiency is judged to be minor. The brief will be filed as of the date received if the deficiency is rectified within 14 days.

[XX] The deficiency is judged to be serious. We cannot file your brief. The deficiency must be corrected within 14 days or this case is subject to dismissal pursuant to Circuit Rule 42-1. The receipt of a seriously defectively brief in this office does not toll the time for filing the brief while the defect is being corrected. Circuit Rule 42-1 provides:

> When an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing an appeal for hearing, an order may be entered dismissing the appeal. In all instances of failure

> to prosecute an appeal to hearing as required, the Court may take such other action as it deems appropriate, including the imposition of disciplinary and monetary sanctions on those responsible for prosecution of the appeal.

[ ] The deficiency by appellee is judged to be serious. We cannot file your brief. You must correct the deficiency within 14 days or be subject to the provisions of FRAP 31(c).

> FRAP provides in part:
>
> If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the Court.

When submitting corrections to your brief or a corrected brief, PLEASE RETURN A COPY OF THIS LETTER, you must submit a motion to file a late brief, if the corrected materials or brief will not be received until after the due date for filing the brief. See also: Circuit Rule 32-2.3 re: Extensions of time for filing brief.

GENERAL DOCKET FOR
Ninth Circuit Court of Appeals

Court of Appeals Docket #: 96-55324 Filed: 3/14/96
Nsuit: 3470 RICO (Fed)
Mothershed v. Durbin, et al
Appeal from: Central District of California, Los Angeles

Case type information:
1) civil
2) private
3)

Lower court information:
District: 0973-2 : CV-94-05082-RMT(Bx)
presiding judge: Robert M. Takasugi, Judge
court reporter: Donna Stephenson, CSR COORDINATOR
Date Filed: 7/27/94
Date order/judgment: 2/12/96
Date NOA filed: 2/26/96

Fee status: paid

Prior cases:

95-70217	JTS	CFP	MB

Date filed: 3/6/95 Date disposed: 3/24/95 Disposition: den/jdg

95-70600	ALA	FFF	PAR

Date filed: 8/4/95 Date disposed: 8/21/95 Disposition: den/jdg

Current cases:

Lead	Member	Start	End
companion:			
96-70131	96-55324	3/14/96	

Docket as of October 28, 1996 11:30 pm

Proceedings include all events.
96-55324 Mothershed v. Durbin, et al

GEORGE L. MOTHERSHED
Plaintiff-Appellant

George L. Mothershed
602/561-2770
[COR LD NTC prs]
6901 West Tonto Drive
Glendale, AZ 85308-5533

v.

GERALD E. DURBIN, II, et al.,
Defendant-Appellee

Gerald E. Durbin, II
405/235-9584
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

HELEN J. CRAWFORD
Defendant-Appellee

Helen J. Crawford
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

LUTHER B. EUBANKS
Defendant-Appellee

Luther B. Eubanks
405/235-9584
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

DURBIN, LARIMORE & BIALICK
Defendant-Appellee

Helen J. Crawford-Zajic
[COR LD NTC ret]
DURBIN, LARIMORE & BIALICK, P.C.
920 N. Harvey
Oklahoma, OK 72102-2610

MARK E. BIALICK
Defendant-Appellee

Mark E. Bialick
405/235-9584
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

ELIZABETH J. NEVITT
Defendant-Appellee

Elizabeth J. Nevitt
405/235-9584
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

GARY L. BROOKS
Defendant-Appellee

Gary L. Brooks
405/235-9584
[COR LD NTC prs]
920 N. Harvey
Oklahoma City, OK 73102

CARROLL E. GREGG
Defendant-Appellee

Carroll E. Gregg
405/235-9584
[COR LD NTC prs]

Docket as of October 28, 1996 11:30 pm

Proceedings include all events.
96-55324 Mothershed v. Durbin, et al

920 N. Harvey
Oklahoma City, OK 73102

Docket as of October 28, 1996 11:30 pm

Proceedings include all events.
96-55324 Mothershed v. Durbin, et al

GEORGE L. MOTHERSHED
Plaintiff-Appellant

v.

GERALD E. DURBIN, II; HELEN J. CRAWFORD; LUTHER B. EUBANKS; DURBIN, LARIMORE & BIALICK; MARK E. BIALICK; ELIZABETH J. NEVITT; GARY L. BROOKS; CARROLL E. GREGG
Defendants-Appellees

Docket as of October 28, 1996 11:30 pm

Proceedings include all events.
96-55324 Mothershed v. Durbin, et al

3/14/96 DOCKETED CAUSE AND ENTERED APPEARANCES OF APLT IN PRO SE AND COUNSEL FOR APLE. CADS SENT (Y/N): n. setting schedule as follows: Fee payment is due 3/28/96 ; appellant's designation of RT is due 3/7/96; appellee's designation of RT is due 3/18/96,, ; appellant shall order transcript by 3/27/96; court reporter shall file transcript in DC by 4/29/96; certificate of record shall be filed by 5/6/96; appellant's opening brief is due 6/13/96; appellees' brief is due 7/15/96,, ; appellants' reply brief is due 7/29/96; [96-55324] (lu) [96-55324]

3/22/96 Received Appellant George L. Mothershed's motion and memorandum to supplement record. (MOATT per PROMO) [96-55324] ; served on 3/19/96 [2974399] [96-55324] (rei) [96-55324]

3/28/96 Order filed: This court sua sponte dismisses this appeal for lack of jurisdiction..... All pending motions are denied as moot. (Procedurally Terminated After Other Judicial Action; Jurisdictional Defects. T. GOODWIN, author; Charles E. WIGGINS; Diarmuid F. O'SCANNLAIN.) [96-55324] (rei) [96-55324]

4/1/96 Received notification from District Court re payment of docket fee. (Date: pd: 4/1/96.) [96-55324] (lu) [96-55324]

6/3/96 Received Appellant George L. Mothershed's brief in 15copies 46 pages (Informal: n) deficient this appeal is closed, needs a motion to reinstate the case. notified PROSE. Served on 5/29/96 [96-55324] respnse to brief deficiency notice due 5/17/96; (rei) [96-55324]

6/11/96 Filed Appellant George L. Mothershed reinstate appeal. [96-55324] served on 6/6/96 [3022848] (MOATT per PROMO.) [96-55324] (rei) [96-55324]

9/9/96 Referred appellant's motion to reinstate case (appeal) [3022848-1] to staff attorney (MOATT). [96-55324] (rei) [96-55324]

10/28/96 Received letter from pro se re: Status of his appeal. (MOATT) (rei) [96-55324]

Docket as of October 28, 1996 11:30 pm

PACER session date: Tuesday November 12, 1996
11:04:05 AM EST

Case docket was last updated on: 04/16/96.
Docket as of April 16, 1996 6:55 pm Page 1
Proceedings include all events. TERMED
2:94cv5082 Mothershed v. Durbin, et al
APPEAL TRANS TERMED APPEAL TRANSF

U.S. District Court
Central District of California (Western Div.)

CIVIL DOCKET FOR CASE #: 94-CV-5082

Mothershed v. Durbin, et al Filed: 07/27/94
Assigned to: Judge Robert M. Takasugi
Referred to: Discovery Volney V. Brown
Demand: $39,270,000 Nature of Suit: 470
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 18:1961 Racketeering (RICO) Act

GEORGE L MOTHERSHED George L Mothershed
plaintiff [COR LD NTC] [PRO SE]
George L Motherhead, OBA 6472
6901 W Tonto Dr
Glendale, AZ 85308-5533
602-561-2770

v.

GERALD E DURBIN, II Gerald E Durbin, II
defendant [COR LD NTC] [PRO SE]
Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

HELEN J CRAWFORD — Helen J Crawford
defendant
[COR LD NTC] [PRO SE]
Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

LUTHER B EUBANKS — Luther B Eubanks
defendant
[COR LD NTC] [PRO SE]
Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

DURBIN, LARIMORE & BIALICK, a — Helen J Crawford Zajic

Docket as of April 16, 1996 6:55 pm

Proceedings include all events. — TERMED
2:94cv5082 Mothershed v. Durbin, et al — APPEAL
TRANSF
professional corp organized & existing under the laws of Oklahoma — [COR LD NTC]
defendant
Helen J C Zajic Law Offices
3 W Carrillo St
Suite 203
Santa Barbara, CA 93101

MARK E BIALICK — Mark E Bialick
defendant
[COR LD NTC] [PRO SE] Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

ELIZABETH J NEVITT — Elizabeth J Nevitt
defendant
[COR LD NTC] [PRO SE] Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

GARY L BROOKS
defendant

Gary L Brooks
[COR LD NTC] [PRO SE] Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

CARROLL E GREGG
defendant

Carroll E Gregg
[COR LD NTC] [PRO SE] Pro per
920 N Harvey
Oklahoma City, OK 73102
405-235-9584

Docket as of April 16, 1996 6:55 pm

Proceedings include all events. TERMED
2:94cv5082 Mothershed v. Durbin, et al APPEAL TRANSF

8/22/84	2	NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that dft's mot to dism, lodged 8/22/94, is to be fld & processed. (gk) [Entry date 08/24/94]
7/27/94	1	COMPLAINT (Summons(es) issued) (referred to Discovery Volney V. Brown) (ca) [Entry date 08/01/94]
8/22/94	3	MOTION by dfts Gerald E. Durbin II, Helen J. Crawford (now known as Helen J. Zajic), Luther B. Eubanks, Durbin Larimore, Mark E. Bialick, Elizabeth J. Nevitt, Gary L. Brooks, & Carroll E. Gregg to dismiss and ntc of motion to dismiss; motion hearing set for 10:00 9/12/94. (gk) [Entry date 08/24/94]
8/22/94	4	MEMORANDUM by dfts Gerald E. Durbin II, Helen J. Crawford (now known as Helen J. Zajic), Luther Eubanks, Durbin Larimore & Bialick, Mark E. Bialick, Elizabeth J. Nevitt, Gary L. Brooks, & Carroll E. Gregg in support of to dismiss [3-1]. (gk) [Entry date 08/24/94]

8/24/94 5 MOTION & MEMORANDUM by plf George L. Mothershed for partial assignment of claims. (gk) [Entry date 08/25/94]

8/24/94 6 NOTICE OF MOTION by plf George L. Mothershed setting motion & memorandum to partial assignment of claims [5-1] 9:30 9/26/94. (gk) [Entry date 08/25/94]

8/24/94 -- LODGED PROPOSED ORDER submitted by plf (FWD TO CRD) (gk) [Entry date 08/25/94]

8/24/94 7 AFFIDAVIT by plf George L. Mothershed in suppt of mot for partial assignment of claims [5-1]. (gk) [Entry date 08/25/94]

8/24/94 8 RETURN OF SERVICE of summons & complaint served upon Gary L. Brooks by certified mail on 7/28/94; return receipt acknowledged by Arlyce Meyer, agent, on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94]

8/24/94 9 RETURN OF SERVICE and of summons & complaint served upon Gerald E. Durbin, II by certified mail on 7/28/94; return receipt acknowledged by addressee Kurt Radichel on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94] [Edit date 08/25/94]

8/24/94 10 RETURN OF SERVICE of summons & complaint served upon Luther B. Eubanks by certified mail on 7/28/94; return receipt acknowledged by addressee Kurt Radichel on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94]

8/24/94 11 RETURN OF SERVICE of summons & complaint served upon Elizabeth A. Nevitt by certified mail on 7/28/94; return receipt acknowledged by addressee Kurt Radichel on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94]

Docket as of April 16, 1996 6:55 pm

Proceedings include all events. TERMED
2:94cv5082 Mothershed v. Durbin, et al APPEAL TRANSF

8/24/94 12 RETURN OF SERVICE of summons & complaint served upon Carroll E. Gregg by certified mail on 7/28/94; return receipt acknowledged by addressee R. Rains on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94]

8/24/94 13 RETURN OF SERVICE of summons & complaint served upon Mark E. Bialick by certified mail on 7/28/94; return receipt acknowledged by addressee Kurt Radichel on 8/1/94 (proof of svc is signed by plf). (gk) [Entry date 08/25/94]

8/24/94 14 RETURN OF SERVICE of summons & complaint served upon James K. Larimore, svc agent for Durbin Larimore and Bialick, a Professional Corporation, by certified mail on 7/28/94; return receipt acknowledged by addressee Kurt Radichel on 8/1/94 (proof of svc is signed by plf). (gk)
[Entry date 08/25/94]

8/25/94 -- RECEIVED & RETURNED Plf's Appl for Dflt & Dflt Jgm Agnst Dfts; and Prop Jgm After Dflt. REASON: Dfts Gerald E. Durbin, II, Helen J. Crawford (now known as Helen J. Zajic), Luther B. Eubanks, Durbin Larimore & Bialick, Mark

E. Bialick, Elizabeth J. Nevitt, Gary L. Brooks, and Carroll E. Gregg fld a mot to dismiss on 8/22/94. (gk)

8/25/94 16 ORDER SETTING BRIEFING SHEDULE ON MOTION(S) by Judge Robert M. Takasugi vacating hearing re dfts' motion to dismiss [3-1]. ORD that the opp or stmt of non-opp to said mot be fld nlt 9/6/94; & the reply, if any, be fld nlt 9/13/94. On or about 9/27/94, the Crt shall issue either a ruling o an ord requiring fur briefing &/or setting the matter for oral arg. ORD that the moving pty is to tiimely serve copies of this Ord & file a proof of svc. (gk) [Entry date 09/09/94]

8/29/94 15 RETURN OF ORIGINAL SUMMONS and proof of service of summons & complaint served upon Helen J. Crawford n/k/a Helen C. Zajic by personal svc on 8/22/94. (gk) [Entry date 08/30/94]

8/29/94 17 REQUEST by plf George L. Mothershed to submit brief exeeding 35 pages. (gk) [Entry date 09/09/94]

8/29/94 -- LODGED PROPOSED ORDER submitted by plf (FWD TO CRD) (gk)
[Entry date 09/09/94]

8/29/94 18 ORDER by Judge Robert M. Takasugi upon plf's request [17-1], Plf is GR lv to file plf's resp brief to dfts' mot to dismiss, which brief of plf is greater than 35 pages in length. (gk) [Entry date 09/09/94]

8/29/94 19 MEMORANDUM by plf George L. Mothershed in resp to dfts' motion to dismiss [3-1]. (gk)
[Entry date 09/09/94]

Docket as of April 16, 1996 6:55 pm

Proceedings include all events. TERMED
2:94cv5082 Mothershed v. Durbin, et al APPEAL TRANSF

9/1/94 20 ORDER SETTING BRIEFING SCHEDULE ON MOTION(S) by Judge Robert M. Takasugi vacating hearing rei plf's motion for partial assignment of claims [5-1]. ORD that the opp or stmt of non-opp to said mot be fld nlt 9/12/94; & the reply, if any, be fld nlt 9/19/94. On or about 10/4/94, Crt shall issue either a ruling or an ord requiring fur briefing &/or setting the matter for oral arg. ORD that the moving pty is to timely serve copies of this Ord & file a proof of svc. (gk) [Entry date 09/09/94]

9/12/94 21 OBJECTION by dfts Gerald E. Durbin II, Luther B. Eubanks, Mark E. Bialick, Elizabeth J. Nevitt, Gary L. Brooks, Carroll E. Gregg, Helen J. Crawford nka Helen J. Zajic & Durbin Larimore & Bialick P.C. to plf's motion & memo to partial assignment of claims & memo in suppt [5-1]. (gk) [Entry date 09/13/94]

9/16/94 22 REPLY by plf George L. Mothershed to dfts' obj to plf's motion & memo to partial assignment of claims [5-1]. (gk) [Entry date 09/20/94]

9/16/94 23 AFFIDAVIT filed by plf George L. Mothershed in suppt of proof of svc of ord of 9/1/94. (gk) [Entry date 09/20/94]

9/26/94 24 STATEMENT OF REASON by dfts Gerald E. Durbin, II, Helen J. Zajic (formerly known as Helen J. Crawford), Luther B. Eubanks, Durbin Larimore & Bialick, P.C., Mark E. Bialick, Elizabeth J. Nevitt (now known as Elizabeth J. Sloan), Gary L. Brooks, & Carroll E. Gregg no reply to plf's memo in resp to dfts' motion to dismiss [3-1] was submitted. (gk) [Entry date 09/27/94]

12/28/94 25 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the plf's entry of apr, lodged 12/28/94, is not to be fld, but instead rejected & returned to cnsl. (gk) [Entry date 02/18/95]

1/3/95 46 NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi re pltf's rply to respn to appl for dflt jgm. Cse trans to N Oklahoma, THE DOC IS NOT TO BE FI BUT INSTEAD REJECTED & RETND TO CNSL (jc) [Entry date 01/08/96]

1/3/95 47 NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi re pltf's exparte appl, ord & w/e, cse trans to N Oklahoma on 7/7/95, THE DOC IS NOT TO BE FI BUT INSTEAD REJECTED & RETN TO CNSL (jc) [Entry date 01/08/96]

1/3/95 48 NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi re ntc & mtn for reconsideration, cse trans to N Oklahoma on 7/7/95, THE DOC IS NOT TO BE FI BUT INSTEAD REJECTED & RETND TO CNSL. (jc) [Entry date 01/08/96]

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2/24/95 26 ORDER by Judge Robert M. Takasugi re mot by dfts to dismiss, or in the alt, transfer to the U.S. District Court for the Western District of Oklahoma. This Crt chooses not to rule on dfts' mot to dismiss because the history of litigation between the parties strongly suggest that the interests of justice would be best served by transferring this actn to the Western District of

Oklahoma where the crt is familiar w/ the numerous prior suits that have been fld, the evidence related thereto, & the results thereof. ORD that this actn be transferred to the U.S. District Court for the Western District of Oklahoma. (ENT 2/28/95) MD JS-6. mld cpys & ntc. (gk) [Entry date 02/28/95]

3/13/95 -- TRANSMITTAL of documents: Mld to USDC, Western District of Oklahoma: Transfer letter; cc Ord transferring actn and docket sheet; and all other orig documents. Ptys notified. (gk)

3/17/95 28 Suppl memo in resp by plaintiff George L Mothershed to dfts' motion to dismiss (dh) [Entry date 03/27/95]

3/23/95 27 RETURN OF TRANSFER LETTER from USDC, Western District of Oklahoma, assigned their Case No. CIV 95 405 T. (gk) [Entry date 03/24/95]

3/28/95 -- LODGED (9th CC: Order): Petitioner has not demonstrated that this case warrants the intervention of this crt by means of the extraordinary remedy of mandamus. Accordingly, the petition is denied. Petitioner's application for an emergency ord is denied as moot. No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed case. (dl) [Entry date 04/10/95]

6/20/95 30 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the mot to vacate, lodged 6/7/95, is not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 07/05/95]

6/28/95 29 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi

that the dft's resp to plf's mot to vacated, lodged 6/26/95, is not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 07/05/95]

7/5/95 31 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the ntc of mot to vacate that certain void ord of this Crt, etc., lodged 6/26/95, is to be fld & processed. (gk) [Entry date 07/11/95]

7/5/95 32 MOTION by plf George L. Mothershed to vacate ; motion hearing set for 9:30 7/10/95. (gk) [Entry date 07/13/95]

7/5/95 33 NOTICE by plf George L. Mothershed of mot hrg for plf's mot to vacate ord. (gk) [Entry date 07/13/95]

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7/5/95 34 BRIEF FILED by plf George L. Mothershed in suppt of mot to vacate [32-1]. (gk) [Entry date 07/13/95]

7/5/95 35 SUPPLEMENTAL MEMORANDUM by plf George L. Mothershed in support of motion to vacate [32-1]. (gk) [Entry date 07/13/95]

7/7/95 38 ORDER by Judge Robert M. Takasugi that the motion by plf to vacate an ord of this crt dtd 2/28/95 [32-1] is stricken. Due to the transfer of this actn to the U.S. District Court for the Western District of Oklahoma, this court does not have jurisdiction to entertain the mot filed by plf. (ENT 7/13/95) mld cpys & ntc. (gk) [Entry date 07/13/95]

7/12/95 36 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the ex parte ptn in suppt of writ of of ne exeat, prop ord, lodged 7/7/95, are not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 07/13/95]

7/12/95 37 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that plf's appl for dflt & dflt jgm agnst dfts; proposed dflt; ntc of mot hrg for jgm after dflt; & proposed jgm after dflt; lodged 7/10/95, are not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 07/13/95]

7/20/95 39 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M.Takasugi that the plf's L.R. 7.15.3 supplemental memo for dflt & dflt jgm agnst dfts; L.R. 7.16 mot & memo for reconsideration; ntc of mot hrg L.R. 7.16 mot & memo for reconsideration; & proposed ord; lodged 7/18/95, are not to be filed, but instead rejected, & returned to cnsl. (gk) Entry date 08/03/95]

7/20/95 40 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the resp to plf's appl for dflt, lodged 7/19/95, is not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 08/03/95]

7/24/95 41 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the plf's appl for dflt & dflt jgm; prop dflt; ntc of mot hrg for jgm after dflt; prop jgm after dflt; ex parte ptn in suppt of ne exeat agnst Brooks; proposed ord; writ of ne exeat; & letter; lodged 7/20/95, are not to be fld, but instead rejected, & returned to cnsl. (gk) [Entry date 08/03/95]

8/3/95 42 NOTICE OF DOCUMENT DISCREPANCY AND ORDER by Judge Robert M. Takasugi that the pklf's reply to dfts' resp to plf's appl for dflt & dflt jgm, filed 7/24/95, is not to be fld, but instead rejected & returned to cnsl. (gk) [Entry date 08/05/95]

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8/7/95 43 NOTICE OF DISCREPANCY AND ORDER tht doc(s) entitled Pla's Appl for Dflt & Dflt Jgm etc are not to be fld instead rejected and retn to cnsl by Judge Robert M. Takasugi (lm) [Entry date 08/11/95]

8/23/95 -- LODGED cc 9th C/A ord petnr has not demonstated that case warrants the intervention of this court by means of extraordinary remedy of mandamus. The pet is DENIED. (app) [Entry date 08/29/95]

10/30/95 44 NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi re doc mot for reconsideration of applic for dflt jgm ldoged on 10-27-95 & ORD tht the doc are not to be fld, but instead rjeected, & returned to cnsl. (Mot's sched for 8-7-95 & case is closed & transfer) (es) [Entry date 11/01/95]

1/3/96 45 NOTICE OF DISCREPANCY AND ORDER by Judge Robert M.Takasugi re ntc & mtn for dflt jgm, cse tran to N Okalahoma 7/7/95, THE DOC IS NOT TO BE FI BUT INSTEAD REJECTED &RETN TO CNSL. (jc) [Entry date 01/08/96]

1/3/96	49	NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi pltf's change of add, cse trans to N Oklahoma, the doc is to be & processed. (jc) [Entry date 01/08/96]
1/3/96	50	NOTICE by plaintiff George L Mothershed of change of address (jc) [Entry date 01/08/96]
1/25/96	51	REQUEST by plaintiff George L Mothershed for hrg ntc of tkn of judicial ntc, ntc of hrg for jgm by dflt, & for writ of NE Exeat (jc) [Entry date 01/26/96]
1/25/96	52	ORDER by Judge Robert M. Takasugi denying request for hrging [51-1]. (ENT 1-26-96) mldcpys/ntc. (ab) [Entry date 01/26/96]
1/31/96	53	NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi on ntc of mot for jgm after dflt etc; ldng 1-31-96; the docs are not to be fld but instead rejected and rtn to cnsl. (ab) [Entry date 02/07/96]
1/31/96	55	NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi on req for hrging etc; ldng 1-31-96; the doc are to not to be fld but instead rejected and rtn to cnsl. (ab) [Entry date 02/07/96]
1/31/96	56	NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi on ntc of mot for reconsideration of ord stiking mot etc; ldng 1-31-96; the doc are not to be fld but instead rejected and rtn to cnsl. (ab) [Entry date 02/07/96]

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1/31/96	57	NOTICE OF DISCREPANCY AND ORDER by Judge Robert M. Takasugi on reply to resp to appl for dflt & dflt jgm; ldgng 1-31-96; the doc are not to be fld but instead rejected and rtn to cnsl. (ab) [Entry date 02/07/96]
2/5/96	58	NOTICE OF hrging MOTION by plaintiff George L Mothershed for new trial. (ab) [Entry date 02/08/96]
2/5/96	--	LODGED/PROPOSED Order (FWD TO CRD) (ab) [Entry date 02/08/96]
2/5/96	59	MOTION by plaintiff George L Mothershed for new trial; motion hearing set for 9:30 3/11/96 (ab) [Entry date 02/08/96]
2/8/96	60	ORDER by Judge Robert M. Takasugi striking motion for new trial [59-1], striking motion for new trial [58-1]. Further ord that the Clerk's Office is hereby directed to not accept any documents for flg from pla hereafter and to, instead, lodged any documents subm by pla and deliver them to this Crt's chambers for the Crt's determination of whether the document should be accepted for flg or rejected

UNITED STATES CONSTITUTION,

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Malitia, when in actual service in time of War or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life, limb, nor shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

TITLE 28, UNITED STATES CODE SECTION 1404(a)

(As amended October 18, 1962,
Public Law 87-845, § 9, 76A Stat. 699)

For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

FEDERAL RULES OF CIVIL PROCEDURE, RULE 59(a).

Grounds. A new trial may be granted to all or any parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any reasons for which there has been a trial have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any reasons for which rehearings heretofore have been granted in suits in equity in the courts of the United States. On motion for a new trial in an action tried without a jury, the court may reopen the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

FEDERAL RULES OF EVIDENCE,

RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. . . .